



State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT CHANGE

File CS4-00714sb2
WR Doc ID 4700176

Add Purpose of Use (Instream Flow and Water Banking)

PRIORITY DATE
October 9, 1893

WATER RIGHT APPLICATION NUMBER
CS4-00714sb2

MAILING ADDRESS
Land Lloyd Development
PO Box 3889
Federal Way WA 98063-3889

SITE ADDRESS (IF DIFFERENT)
FOWLER CREEK RD AND WESTSIDE RD
CLE ELUM 98922

Total Quantity Authorized

WITHDRAWAL OR DIVERSION RATE	UNITS	ANNUAL QUANTITY (AF/YR)
1.5	CFS	25.64

Purposes

PURPOSE	WITHDRAWAL OR DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Instream Flow*	1.5		CFS	25.64		4/15 - 9/30

Primary Reach*

1.5 cubic feet per second (cfs), 25.64 acre-feet per year (ac-ft/yr) for the purpose of instream flow and water banking from April 15 through September 30.

Secondary Reach

Instream Flow in Secondary Reach

	June	July	August	Sept.	Total
Avg. Qi (cfs)	0.052	0.098	0.073	0.054	---
Qa (ac-ft/yr)	3.10	6.04	4.45	3.22	16.8

Source Location

COUNTY	WATERBODY	TRIBUTARY TO	WATER RESOURCE INVENTORY AREA
Kittitas	Fowler Creek	Yakima River	39-Upper Yakima

IRRIGATION SOURCE	PARCEL	WELL TAG	TWN	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
Fowler Creek	575434		19N	14E	02	NENW	47.175	-121.064

Datum: NAD83/WGS84

Place of Use for Instream Flow (See Attached Map)

Primary Reach: Begins at a point approximately 375 feet south and 1,400 feet east from the northwest corner of Section 2, being within Government Lot 4, Section 2, T. 19 N., R 14 E.W.M.

Secondary Reach: Begins at a point approximately 70 feet north and 2,265 feet east from the northwest corner of Section 2, T. 19 N., R 14 E.W.M. being within Section 35, T. 20 N., R 14 E.W.M., and continues to the confluence of the Yakima River and the Columbia River.

Authorized Existing Works

The Land Lloyd property is supplied water from Fowler Creek via an open ditch located approximately 650 feet west from the western boundary of the POU.

Construction Schedule

BEGINNING DATE	END DATE
N/A	N/A

Trust Water Right Term

BEGINNING DATE	END DATE
Permanent	N/A

Measurement of Water Use

How often must water use be measured?	N.A.
How often must water use data be reported to Ecology?	N.A.

Provisions

Real Estate Excise Tax

This decision may indicate a Real Estate Excise Tax liability for the seller of water rights. The Department of Revenue has requested notification of potentially taxable water right related actions, and therefore will be given notice of this decision, including document copies. Please contact the state Department of Revenue to obtain specific requirements for your project. Phone: (360) 570-3265. The mailing address is: Department of Revenue, Real Estate Excise Tax, PO Box 47477, Olympia WA 98504-7477 Internet: <http://dor.wa.gov/>. E-mail: REETSP@DOR.WA.GOV.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.


Therefore, I ORDER approval of Application No. CS4-00714sb2, subject to existing rights and the provisions specified above.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.


Mark Kemner, Section Manager
Water Resource Program/Central Region Office

4/12/12
Date

BACKGROUND

Description and Purpose of Proposed Change

On October 19, 2010, Land Lloyd Development Inc., applied to change Court Claim No. 00714 to instream flow in order to offset the consumptive use associated with new groundwater uses.

Table 1

Attributes of Existing Water Right and Proposed Change to Court Claim No. CS4-00714

Attributes	Existing	Proposed
Name	Land Lloyd Development	Land Lloyd Development
Priority Date	October 9, 1893	
Change Application Date		10/12/2010
Instantaneous Quantity	0.2 cubic feet per second (cfs) for irrigation 1.3 cfs for conveyance	0.2 cfs for instream flow 1.3 cfs for conveyance
Annual Quantity	30.0 acre-feet per year (ac-ft/yr) for irrigation	25.64 ac-ft/yr for instream flow
Purpose of Use	Irrigation	Instream flow & mitigation
Period of Use	April 15 to September 30	No change
Place of Use	The north 400 feet of Gov't Lots 2 and 3, Section 2, T. 19 N., R. 14 E.W.M.; EXCEPT the west 700 feet of Gov't Lot 3	See page two of this report

Existing Sources of Withdrawal or Diversion

Source Name	Parcel	WellTag	Twn	Rng	Sec	QQ Q	Latitude	Longitude
Fowler Creek	575434		19N	14 E	02	NW NE	47.175	-121.064

Legal Requirements for Proposed Change

The following is a list of requirements that must be met prior to authorizing the proposed change in Water Right Change Application No. CS4-00714sb2.

Public Notice

Notice was published by the applicant in *The Daily Record* of Ellensburg for two consecutive weeks, commencing on March 17th and March 24th, 2011.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- a) It is a surface water right application for more than 1.0 cubic feet per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50.0 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- b) It is a groundwater right application for more than 2,250 gallons per minute;
- c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

Water Resources Statutes and Case Law

RCW 90.03.380(1) states that a water right that has been put to beneficial use may be changed. The point of diversion, place of use, and purpose of use may be changed if it would not result in harm or injury to other water rights.

The Washington Supreme Court has held that the Department of Ecology (Ecology), when processing an application for change to a water right, is required to make a tentative determination of extent and validity of the claim or right. This is necessary to establish whether the claim or right is eligible for change. *R.D. Merrill v. PCHB* and *Okanogan Wilderness League v. Town of Twisp*.

RCW 90.42.100(1) states that Ecology is authorized to use the Trust Water Right Program in the Yakima River basin for water banking purposes.

RCW 90.42.100(2)(a) states that water banking may be used to mitigate for any beneficial use under chapter 90.03, 90.44. or 90.54 RCW, consistent with any terms and conditions established by the transferor, except that return flows from water rights authorized in whole or in part for any purpose shall remain available as part of the Yakima basin's total water supply available and to satisfy existing rights for other downstream uses and users.

RCW 90.42.100(2)(b) states that water banking may be used to transfer water rights to and from the Trust Water Right Program.

INVESTIGATION

The water right change investigation was conducted by Kurt Walker from Ecology's Water Resources Program. A site investigation was made on November 17, 2010, and was attended by Dennis Burchak. Additional information regarding the use of water was obtained through:

- Documentation submitted by the applicant, their consultant, and the irrigation manager including:
 - Project overview Memorandum by Pacific Groundwater Group dated October 12, 2010
 - Irrigation design materials
 - Water use records
- Conversations with:
 - Bob Couper
 - Jill Van Hulle
 - Dennis Burchak
- Review of digitized topographic maps and aerial photographs.
- Yakima County Superior Court *Reports of Referee* on the Yakima River Basin Water Rights Adjudication for Subbasin No. 2 (Easton).

History of Water Use

Court Claim No. 00714 of the Acquavella Adjudication is appurtenant to the Land Lloyd property. Court Claim No. 00714 authorizes diversion of water from Fowler Creek for the irrigation of 10 acres. Water is diverted into an open ditch which courses to the subject property. The Court awarded 0.2 cfs and 30.0 ac-ft/yr for the irrigation of 10.0 acres, and 1.3 cfs for ditch conveyance.

See Attached Map (Attachment 1) for POU and POD locations.

The subject land was historically irrigated through a flood method of application. In 2003, roughly half of the authorized irrigation began occurring by means of 'pop-up' style sprinklers. The other half of the subject irrigation continued to be flood irrigated.

Table 2
²Total Irrigation Water Use under Court Claim 00714

Method	Acres	¹ Efficiency (%)	¹ Evaporation (%)	Total Irrigation Requirement (TIR)(ac-ft)
Flood	5.5	50	5	16.59
Pop-up	4.5	75	10	9.05

¹ Values taken from Ecology's *GUID 1210*.

² Does not include conveyance portion of Court Claim 00714.

Ecology can change a water right to the extent which it has been put to beneficial use (RCW 90.03.380), so long as no period of five successive years of non-use has occurred without sufficient cause (RCW 90.14.140-180). Pursuant to the Conditional Final Order dated February 13, 1997, for Subbasin 2 of the Acquavella Adjudication, Court Claim No. 00714 was confirmed as a right to divert up to 0.2 cfs and 30.0 ac-ft/yr for the irrigation of 10.0 acres, and 1.3 cfs for ditch conveyance. While the area being irrigated has not changed, the annual amount of water use for irrigation has reduced from 30.0 ac-ft to 25.64 ac-ft. This is a result of increased efficiency realized through the development of a sprinkler system.

Proposed Use

The applicant proposes to change Court Claim No. 00714 for the purposes of instream flow and water banking in order to offset the consumptive use associated with new groundwater uses. The applicant has applied for two new groundwater permits (G4-35432, G4-35529) which identify this instream flow right as mitigation.

Other Rights Appurtenant to the Place of Use

A review of Ecology's records and database did not reveal any other rights or claims which are appurtenant to the subject property. Land Lloyd Development has filed an application for groundwater use (G4-35529) within the historic POU.

Instream Flow Calculations

In the absence of complete water use records, Ecology uses various methods to estimate the amount of water used and consumed. One source of information frequently used by Ecology is the Washington Irrigation Guide (WIG) (NRCS, 1997). The WIG data list the estimated amount of water required by the crop or crop irrigation requirement (CIR) in addition to the existing moisture in the root zone under average climatic conditions.

Ecology's Guidance Document GUID 1210, *Determining Irrigation Efficiency and Consumptive Use*, was used to determine irrigation efficiency (Ea), total irrigation requirement (TIR), and consumptive use (CU). According to the WIG, the CIR for pasture/turf in the Cle Elum area is 18.11 inches per acre. The subject property is irrigated by two methods: pop-up sprinklers and flood irrigation. The applicant proposes to cease all 10.0 acres of irrigation (5.5 acres flood irrigation and 4.5 acres sprinkler irrigation). Using Table 1 from GUID 1210, the Ea is estimated at 50% for flood irrigation and 75% for pop-up sprinkler irrigation.

Equation 1

Total Irrigation Requirement

$$TIR = CIR \div Ea$$

Equation 2

$$CU = (TIR \times \% \text{Evaporation}) + CIR$$

* 5% for flood irrigation and 10% for sprinkler irrigation. These are consistent with the values found in Ecology's GUID 1210.

Applying Equation 1, the TIR associated with 5.5 acres of flood irrigation equates to 16.59 ac-ft/ yr. Likewise, applying Equation 1 to 4.5 acres of sprinkler irrigation yields a TIR of 9.05 ac-ft/yr. These values (16.59 ac-ft/ yr & 9.05 ac-ft/ yr) comprise the annual quantity (25.64 ac-ft/yr) of water which will benefit the primary reach. Applying Equation 2 to the flood and sprinkler irrigated lands equates to 9.13 ac-ft/yr and 7.69 ac-ft/yr of CU respectively. These values (9.13 ac-ft/yr & 7.69 ac-ft/yr) comprise the annual quantity (16.8 ac-ft/yr) of water which will benefit the secondary reach. The monthly distribution of CU/secondary reach quantities is found on the front page of the ROE.

Beneficial Use

RCW 90.38 and 90.42 identify instream flow as a beneficial use.

Impairment Considerations

Under RCW 90.38.040(5)(a), a trust water right may be exercised only if Ecology first determines that the authorization will not impair or injure any other water right. There are no downstream surface water users on Fowler Creek. Below the confluence of Fowler Creek with the Yakima River, many water right claims have been confirmed by the court. Approval of this application for instream flow purposes, up to 1.5 cfs in the primary reach and 16.8 ac-ft/yr in the secondary reach, will not reduce water availability to any surface water Yakima River water user. Ecology will send a notice containing pertinent information to all appropriate state agencies, potentially affected local governments and federally recognized tribal governments, and other interested parties prior to exercising this water right as a trust water right.

Consideration of Protests and Comments

No protests or comments were filed in response to the public notice of this application.

Conclusions

The author tentatively determines Court Claim No. 00714 represents a valid water right to divert water from Fowler Creek in quantities up to 0.2 cfs and 25.64 ac-ft per year for the irrigation of 10.0 acres, plus 1.3 cfs for conveyance, from April 15 to September 30. The applicant installed a more efficient water distribution system on part of the property more than 5 years ago. The total water use described in the tentative determination is based on reasonable use of the upgrade system serving 4.5 acres of the 10 acre total. No sufficient cause for non-use or exception to relinquishment is apparent.

The proposed change of purpose of use to instream flow and the change of place of use to Fowler Creek and the Yakima River will not result in the impairment to other water rights.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that the request for change to Court Claim 00714 be approved in the amounts and within the limitations listed below and subject to the provisions beginning on Page 2, et seq.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

Instream Flow Purpose:

Primary Reach: 1.5 cfs, up to 25.64 ac-ft per year, from April 15 through September 30.

Secondary Reach:

Instream Flow in Secondary Reach

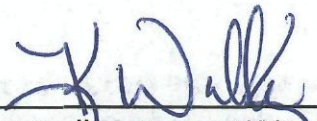
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Avg. Qi (cfs)	0.052	0.098	0.073	0.054	---
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Place of Use

Primary Reach: Begins at a point approximately 375 feet south and 1,400 feet east from the northwest corner of Section 2, being within Government Lot 4, Section 2, T. 19 N., R 14 E.W.M.

Secondary Reach: Begins at a point approximately 70 feet north and 2,265 feet east from the northwest corner of Section 2, T. 19 N., R 14 E.W.M. being within Section 35, T. 20 N., R 14 E.W.M., and continues to the confluence of the Yakima River and the Columbia River.

Report by:


Kurt Walker, Report Writer

Water Resources Program/Central Region Office

Date

4-12-12

REFERENCES

Natural Resources Conservation Service, 1997. *Washington Irrigation Guide. Appendix B: Climatic Station for Consumptive Use (WA 210-VI-WAIG).*

If you need this publication in an alternate format, please call Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Attachment 1

